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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,263	01/05/2004	William R. Rassman	M-15239-1P US	4042
32605	7590	04/01/2008	EXAMINER	
MACPHERSON KWOK CHEN & HEID LLP 2033 GATEWAY PLACE SUITE 400 SAN JOSE, CA 95110			NGUYEN, VI X	
		ART UNIT	PAPER NUMBER	
		3734		
		MAIL DATE	DELIVERY MODE	
		04/01/2008	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/752,263	RASSMAN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Victor X. Nguyen	3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 November 2007.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 13-24 and 30-40 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 13-16, 19-24, 30-32 and 35-40 is/are rejected.  
 7) Claim(s) 17-18, 33-34 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

1. This Pre-appeal brief filed 11/15/2007, with respect to claims 13-24 and 30-40 are acknowledged. The terminal disclaimer is also acknowledged. However, upon further consideration, new rejections are made below.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 13-16,19-24,30-32,35-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Poole. (6,213,971).

Poole discloses in figure 2, a surgical device having the limitations as recited in the above listed claims, including: a housing that includes chambers 2,7 for housing a loaded hair graft or tissue, a vacuum source (100) coupled to the housing to provide suction through a movable gas per-meable rod 3 (element 3 is considered as a gas per-meable rod because it is a hollow rod which is capable of having a gas permeable to flow through the hollow tube) at the open distal end for drawing a hair graft into the graft chamber, where the rod is inside the housing, and where an actuator 3a moves the end of the rod substantially so that a loaded hair graft is delivered to a scalp wound (a functional limitation): Thus a reference needs not show the structure of the recitation in order to meet the claim language but rather the reference needs only be capable of being used with such structure, where the vacuum source coupled to the actuator chamber, and where the actuator includes a plunger or a piston 3a connected to

the rod, and where the plunger is able to move the rod, where the actuator includes a piston inside the actuator chamber, and where the device further includes a spring 10 coupled to the piston, where the spring is capable of moving the end of the rod to the first position from the second position, and where the device further comprises a projection at best seen in figs 1 and 2 which connected to the hair graft chamber, the projection extends in parallel to the central axis and beyond the open distal end of the housing.

***Allowable Subject Matter***

3. Claims 17-18 and 33-34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

***Response to Arguments***

4. Applicant's arguments filed 11/15/2007 have been considered but are moot in view of new ground(s) of rejections. Applicant is asked to please refer to the modified prior art rejections above where examiner addresses applicant's concerns regarding prior art rejections.

***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X. Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ho Jackie can be reached on (571) 272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin T. Truong/  
Primary Examiner, Art Unit 3734

Victor X Nguyen  
Examiner  
Art Unit 3734

VN  
3/28/2008